



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,737	12/29/2000	Sherena D. Fortune	00-0837	7141

7590 03/31/2003
Kaardal & Associates, PC
Attn: Ivar M. Kaardal
Suite 250
3500 South First Ave. Circle
Sioux Falls, SD 57105-5802

EXAMINER

GOODWIN, JEANNE M

ART UNIT PAPER NUMBER

2841

DATE MAILED: 03/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,737

Applicant(s)

FORTUNE, SHERENA D.

Examiner

Jeanne-Marguerite Goodwin

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claim 13 objected to because of the following informalities: In claim 13, line 5: "id" should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: between the detecting means, bar cod indicia and the signaling means.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2841

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,009,400 to Blackman [hereinafter Blackman].

Blackman teaches a method for alerting customers from purchasing perished items using a substrate comprising a bar code indicia indicating the expiration date of the items and being marked on the items, wherein the indicia is machine-readable by an electro-optical scanner, wherein the scanner is operative for consulting a look-up table/processor, retrieving information from the table, and alerting the customers of the retrieved information advising against purchase of the items (see column 9, lines 18-30).

Claim Rejections - 35 USC § 103

7. Claim 2-5, 7, 9, 10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackman.

Blackman discloses a device as stated above with regards to claims 1, 6, 11 and 12. Blackman discloses all the subject matter claimed by applicant with the exception of the limitation stated in claim 2, i.e., the bar code indicia comprises a plurality of bars, each of the bars being arranged in a manner indicating a particular expiration date of the product; the limitation stated in claim 3, i.e., each of the bars is oriented substantially parallel to each other; the limitation stated in claim 5, i.e., the substrate has a bottom surface with an adhesive for attachment to the product; the limitation stated in claims 7 and 13, i.e., the processor is adapted to compare the date of detection of the bar code indicia to the expiration date of the product

Art Unit: 2841

represented; the limitation stated in claims 9, 10, 14 and 15, i.e., the particular type of signaling means, i.e., light

With respect to the limitations stated in claims 2, 3 and 5: the particular type of bar code system: The particular bar code system chosen is a mere selection of alternatives lacking any criticality.

With respect to the limitation stated in claims 7 and 13: It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. See *In re Hutchinson*, 69, USPQ 138.

With respect to the limitation stated in claims 9, 10, 14 and 15: the particular type of signaling means, i.e., light. The particular signaling means chosen is a mere selection of alternatives lacking any criticality.

8. Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackman in view of US Patent 5,196,686 to Leister [hereinafter Leister].

Blackman discloses a device as stated above with regards to claims 1, 6, 11 and 12. Blackman discloses all the subject matter claimed by applicant with the exception of the limitation stated in claims 8 and 14, i.e., the scanner being mounted in a counter having a scanner window.

With respect to the limitation stated in claims 8 and 14: Leister discloses a bar code reader/scanner mounted within a counter in order to increase the speed of a checkout operation. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the

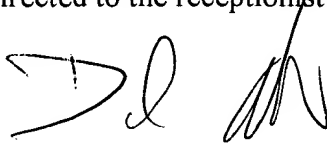
Art Unit: 2841

invention was made to replace the scanner system, as taught by Blackman, with the bar code reader/scanner, as taught by Leister, since both are alternative types of scanner systems which will provide the same function, if one is replaced with the other, of scanning bar code indicia, as already suggested by Leister.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 disclose related devices. US Patent 6,190,610 to Goldsmith et al. discloses a detection of contaminants in food; US Patent 6,131,399 to Hall discloses a bar code reader system which indicates expired perishables; and US patent 6,327,576 to Ogasawara discloses a bar code system for managing expiration-dated products utilizing an electronic receipt.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Jeanne-Marguerite Goodwin whose telephone number is (703) 305-0264. The examiner can normally be reached on Monday-Friday (9am-6pm), alternate Fridays off. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7724. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



JMG
March 20, 2003

DAVID MARTIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800